IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL REVISION APPLICATION NO.133 of 2004

Abid Kurbanhussain Daruwalla ...Applicant

vs.

Patil Store Crusher & Co. ...Respondent

Mr.Uday Warunjikar for the Applicant
Mr.Rahul Thakar for Respondent Nos.2 and 3.

CORAM: A.S.OKA,J.
DATE : MARCH 14,2007.

ORAL JUDGMENT:

1. Heard learned Counsel for the parties. This Revision Application under section 115 of the Code of Civil Procedure,1908 has been preferred by the Petitioner-Plaintiff for challenging the order dated 19th April 2004 passed by the learned Civil Judge (Senior Division), Panvel. By the impugned order, the learned Trial Judge granted unconditional leave to the Respondents (original Defendants) to defend a summary suit filed by the Petitioner.

2. The summary suit was filed by the Petitioner praying for a decree in the sum of Rs.7,58,450/- together with interest at the rate of 18% p.a. thereon from the date of the suit till realisation of the entire amount.

3. According to the case of the Petitioner, second and third Respondents on behalf of the first Respondent-firm had approached the Petitioner for grant of financial assistance in

the sum of Rs.2,00,000/- for acquiring certain machinery. Accordingly, the Petitioner advanced a sum of Rs.2,00,000/- to the Respondents. It is the case of the Petitioner that the Respondents were to return the said amount together with fixed share in the profit earned from said the machinery by monthly instalment of Rs.7,500/-. According to the case of the Petitioner, money was advanced in October 1997 and till December 2000, the Respondents did not pay any amount to the Petitioner. On 7th January 2001 the Respondents handed over a cheque in the sum of Rs.2,92,500/- to the Petitioner. The said cheque was drawn on Canara Bank, Kalamboli Branch on account of the first Respondent-firm. The said cheque was dishonoured. It is not in dispute that a complaint under section 138 of Negotiable Instruments Act,1882 (hereinafter referred to as the said Act of 1882) was filed by the Petitioner against the Respondents in the Court of Judicial Magistrate (First Class), Panvel. The said complaint ended in conviction of the Respondents. On the basis of the said cheque, present suit was filed by the Petitioner.

4. The learned Counsel for the Petitioner submitted that without assigning any reasons, the learned Trial Judge has granted unconditional leave to the Respondents. He pointed out that the cheque issued by the Respondents was admittedly issued towards satisfaction of the liability. Therefore, after dishonour of the cheque, grant of unconditional leave to

the Respondents to defend the suit was completely erroneous. He submitted that in any case, the Court ought to have granted conditional leave subject to deposit of the entire amount claimed by the Petitioner.

5. The learned Counsel for the Respondents stated that during the pendency of this Revision Application, the order of conviction passed by the learned Magistrate against the Respondents under section 138 of the said Act of 1882 has been confirmed by the Sessions Court in an Appeal. He stated that as directed under the said order of conviction, the Respondents have deposited a sum of Rs.4,90,000/- towards compensation and the said amount has been withdrawn by the Petitioner. He, therefore, submitted that no interference is called for.

6. The learned counsel for the Petitioner did not dispute that the Petitioner has withdrawn the said amount of Rs.4,90,000/-. He, however, submitted that the said payment has nothing to do with the claim involved in the suit as the said amount represents the compensation under section 357 of the Code of Criminal Procedure,1973 payable by the Respondents.

7. I have considered the submissions. Even according to the case of the Petitioner, the dishonoured cheque in the sum of

Rs.2,92,500/- was issued in January 2002 by the Respondents to the Petitioner in discharge of the liability in respect of which the suit has been filed. A complaint under section 138 of the said Act of 1882 was filed on the basis of the same cheque. Now, the Petitioner has received a sum of Rs.4,90,000/-.

8. There is some merit in the submission of the learned Counsel for the Petitioner that the merits of the case are not considered while granting unconditional leave in favour of the Respondents. Considering the dishonour of the cheque this was a fit case for granting a conditional leave to defend subject to deposit of cheque amount with some further amount towards reasonable interest. However, there are subsequent events. As stated above, the Petitioner has withdrawn a sum of Rs.4,90,000/- which was deposited by the Respondents in criminal case. Even if conditional leave was to be granted in favour of the Respondents by modifying the impugned order, there could not have been a direction to deposit an amount which is more than Rs.4,90,000/-. Now, the Respondents have deposited the said amount and the same is withdrawn by the Petitioner. In view of this fact, now, the Respondents are entitled to defend the suit. In view of what is stated above, it is not necessary to interfere with the impugned order.

9. Revision Application is accordingly disposed of with no

order as to costs.

JUDGE